



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120813331-3122-02]

RIN 0648- XC164

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Sector Exemptions; Final Rule Implementing a Targeted Acadian Redfish Fishery for Sector Vessels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This action expands on a previously approved sector exemption by allowing groundfish sector trawl vessels to harvest redfish using nets with codend mesh as small as 4.5 inches (11.4 cm). In addition, this action allows sectors to develop an industry-funded at-sea monitoring program for sector trips targeting redfish with trawl nets with mesh sizes that are less than the regulated mesh size requirement. This action is necessary to expand an exemption from current regulations and is intended to allow sector vessels the opportunity to increase redfish harvest and subsequent profitability, above what is already being harvested.

DATES: Effective [Insert date of filing for public inspection at the Office of the Federal Register], until April 30, 2013.

ADDRESSES: A copy of the accompanying environmental assessment (EA) and supplement and the draft of Component 2 of the REDNET project are available from the NMFS Northeast

Regional Office: John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the Federal eRulemaking Portal: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst, phone (978) 281-9182, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

Regulations from Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) allow a groundfish sector to request exemptions from Federal fishing regulations through its annual operations plan. Based on catch data from a collaborative research project, referred to as REDNET, several NE multispecies sectors submitted a regulatory exemption request to fish with 4.5-inch (11.4-cm) codend mesh when targeting Acadian redfish (Sebastes fasciatus) in a portion of the Gulf of Maine, east of the year-round Western Gulf of Maine Closure Area. A detailed explanation of the REDNET research project, sector exemption requests to target redfish, and the development of this particular exemption request can be found in the proposed rule for this action (77 FR 66947; November 8, 2012). Those details are not repeated here.

Regulatory exemption requests are normally proposed, reviewed, and approved through the final rule implementing the annual sector operations plans. However, sectors can request exemptions at any time within the fishing year (for a more detailed explanation of the sector exemption request process and current sector exemptions, see 77 FR 8780; February 15, 2012). The New England Fishery Management Council (Council) has requested that we pursue exemptions allowing sector vessels to more efficiently target redfish, and the Council's Research

Steering Committee has endorsed the approval of a 4.5-inch (11.4-cm) mesh exemption.

Because of this, we proposed a 4.5-inch (11.4-cm) codend trawl mesh exemption for potential mid-year implementation. All measures that were proposed for this exemption are also extended to the 6-inch (15.2-cm) codend mesh exemption for trips targeting redfish, which is currently approved for fishing year 2012. Table 1 below provides a timeline summarizing the key events for this action.

Table 1 Timeline of Targeted Redfish Fishery Development

December 1, 2011	The Sustainable Harvest Sector and Northeast Fishery Sectors submit an exemption request to use codend mesh as small as 4.5-inches (11.4 cm) to target redfish.
December 21, 2011	NMFS informs the requesting sectors that the exemption request was submitted too late to be considered for approval by May 1, 2012, the start of fishing year 2012.
February 1, 2012	Preliminary findings from Component 2 (of 6) of the REDNET report are presented to the Council.
February 7, 2012	The Council requests NMFS expedite approval of a sector exemption to target redfish.
April 2012	A draft of Component 2 (of 6) of the REDNET report is completed.
May 21, 2012	NMFS requests the Council's Research Steering Committee to review the draft REDNET report.
June 25, 2012	After reviewing the catch data (including discards) presented in the draft REDNET report, the Research Steering Committee recommends that an exemption allowing vessels to use 4.5-inch (11.4-cm) mesh codend to target redfish be approved annually based on catch information from the previous year.
November 8, 2012	NMFS publishes a proposed rule to implement a targeted Acadian redfish fishery.

Approved Measures

1. Exemption from 6.5-inch (16.5-cm) Codend Mesh Size so Vessels Can Target Redfish

This final rule authorizes a regulatory exemption for the remainder of fishing year 2012 that allows sector vessels to target redfish with codend mesh greater than or equal to 4.5 inches (11.4-cm) but less than 6.5 inches (16.5-cm) (the required minimum codend mesh size for the area fished).

Requirements For Mesh Size Exemption Use

Sectors that intend to use this exemption must notify NMFS and receive amended letters of authorization prior to fishing. To aid in identifying trips targeting redfish with small-mesh nets, sector vessels intending to utilize this exemption are required to submit a trip start hail identifying the trip as one that will target redfish under the exemption. In addition, all sector trawl vessels that intend to target redfish with codend mesh less than 6.5 inches (16.5-cm) are required to have an observer or at-sea monitor on board. Mesh sizes are measured as described at 50 CFR 648.80(f).

Mesh Exemption Performance Monitoring Requirements

To ensure that this exemption does not negatively impact fish stocks, we have established two catch thresholds that, if exceeded by a sector, could result in the NMFS Northeast Regional Administrator rescinding the approval of this exemption for the sector in question. First, to help ensure that vessels do not direct on other species of fish, monthly catch amounts of regulated groundfish (both landings and discards) when trawling small mesh under this exemption must be comprised of at least 80 percent redfish. Second, to help mitigate catches of sub-legal sized groundfish, total groundfish discards (including redfish discards), may not exceed 5 percent of all regulated groundfish caught monthly when trawling with small-mesh nets. These thresholds were determined to be consistent with catch information from REDNET research trips. The initial findings from the REDNET project, including catch data, were presented to the Council and its Research Steering Committee, both which endorsed the report and encouraged NMFS to approve an exemption which would allow redfish to be targeted with smaller mesh. A presentation on the proposed rule, including the thresholds, was also given to the Council's Groundfish Committee on December 19, 2012. Catch data recorded by the observer or at-sea

monitor will be used to monitor these thresholds. The Regional Administrator retains the authority to further adjust these two thresholds, if necessary, to help ensure that vessels are directing on redfish and catching minimal amounts of undersized groundfish.

Mesh Exemption Revocation

An interim reporting process is being developed to monitor catch under this exemption. Sector catch utilizing this exemption will be analyzed on a calendar monthly basis with a cumulative calculation throughout the fishing year. For example, if a sector discards 2 lb (0.91 kg) out of 100 lb (45.36 kg) of regulated groundfish caught (catch includes landings and discards) in month one, and 6 lb (2.72 kg) out of 200 lb (90.72 kg) of regulated groundfish in month two, the sector would have cumulatively discarded 8 lb (3.63 kg) out of 300 lb (136.08 kg), or 2.67 percent. If a sector exceeds either the 80 percent redfish threshold or 5 percent discard threshold, it would have 1 month to correct the overage(s) (i.e., the sector must be completely compliant with the thresholds by the end of the “correcting” month). If after 1 month the sector has still exceeded either threshold, the exemption for that particular sector could be revoked by the Regional Administrator for the remainder of the fishing year through a notice published in the Federal Register. Because of these catch thresholds, a catch monitoring program, and the requirement to submit a trip start hail, sector vessels are no longer required to submit daily catch reports when utilizing either this or the existing 6.0-inch (15.2-cm) codend mesh exemption for redfish. The reporting mechanisms used for submitting catch data may be adjusted at any time if deemed necessary by the Regional Administrator.

In addition, the Regional Administrator reserves the right to revoke this exemption on determining that the exemption is negatively impacting spawning fish, rebuilding efforts for any

groundfish stock, or populations of stocks that the current minimum codend mesh size of 6.5 inches (16.5-cm) was intended to protect.

Use Of Multiple Mesh Sizes

We specifically requested public comment on whether vessels requesting this exemption should be allowed to fish with both exempted small mesh and regulated codend mesh nets for other groundfish stocks on the same trip citing concern that some requirements could be circumvented. For example, because monitors do not observe every haul (fishing operations may occur while monitors are sleeping), exact catch from these hauls cannot be identified and included in catch thresholds.

This action allows vessels to fish with multiple mesh sizes while fishing on a trip targeting redfish with small mesh. As stated in the proposed rule, if the majority of hauls are not observed, the Regional Administrator could revoke the exemption. Vessels not fishing under an exempted redfish trip remain subject to the minimum mesh size requirements specified in the regulations.

Discard Rate For Exempted and Non-Exempted Trips

All exempted small-mesh redfish trips will be observed and discard estimates on observed hauls will be used to calculate discards of unobserved hauls – a total amount of discards will then be derived for the entire trip. All groundfish catch from a declared small-mesh exempted redfish trip will be debited against the sector's allocation. No catch from small-mesh exempted redfish trips (even catch from mesh greater than 6.5 inches (16.5-cm)) will be factored into a sector's overall discard rate because targeted redfish trips may exhibit different behavior and/or catch rates.

2. Request to Develop Industry-Funded At-Sea Monitoring Programs for Trips Targeting Redfish

As previously outlined, any sector vessel targeting redfish under a mesh size exemption is required to have an observer or at-sea monitor on board. Some sectors are concerned that vessels may lose flexibility if they have to wait to be randomly selected for a federally-funded observer or at-sea monitor through the existing monitoring programs. Several sectors asked to work with us to develop an industry-funded at-sea monitoring program to avoid delays while waiting for random monitoring selection. We have determined that we can support a small-scale industry-funded program. Limitations to the size of the program are due to a limited pool of available observers and at-sea monitors.

Industry-Funded Monitoring Program Plan Approval

Four sectors (26 vessels) have expressed interest in funding additional at-sea monitoring coverage for exempted trips targeting redfish. Any sector interested in developing an industry-funded at-sea monitoring program will be required to develop a monitoring plan as part of its operation plan to be approved by NMFS. If NMFS determines the plan is sufficient, NMFS will approve it along with the rest of the sector's operations plan. For fishing year 2012, any approved monitoring program will be included as an addendum to the sector's operations plan.

Pre-Trip Notification While Using Industry-Funded Monitors

A vessel fishing with an industry-funded at-sea monitor must notify NMFS at least 48 hours in advance of taking an exempted small-mesh trip targeting redfish. Instead of calling into the Pre-Trip Notification System currently established for sector vessels, the vessel will call into a separate system. Call-in information will be provided to the sector vessels utilizing the exemption upon implementation of the program.

Industry-Funded Program Participation

We proposed that all vessels enrolled in a sector with an approved industry-funded program would forfeit the opportunity to have a randomly assigned federally funded observer or at-sea monitor. We also proposed that any vessel in a sector that has an approved industry-funded program and elects to target redfish under the exemption would be required to pay for at-sea monitoring coverage for that redfish trip. However, based on comments received, this final rule allows sectors to propose industry-funded at-sea monitoring programs that apply only to specific vessels within a sector. Vessels that intend to fish with industry-funded at-sea monitors must be identified in the sector's monitoring plan. Identified vessels may not opt-out of the industry-funded program until the following fishing year. While identified vessels may still be selected for random observer or at-sea monitoring coverage when not targeting redfish under this exemption, these vessels may not fish under this exemption with a randomly selected observer or at-sea monitor. All other vessels in the sector may only participate in the exempted small-mesh fishery if their trip is selected for random observer or at-sea monitoring coverage.

Comments and Responses

Ten public comments were received, seven of which are relevant to this action. Comments that were similar were combined and all relevant comments are responded to below. Comments submitted by the Council, Associated Fisheries of Maine, Maine Coast Fishermen's Association, State of Maine, and Northeast Sector Service Network all supported allowing vessels to target redfish with smaller mesh. The Pew Environment Group opposes the exemption. A coordinator for the REDNET project provided a clarification on the proposed rule. Several of the comments addressed more specific issues discussed below.

Comment 1: The Council, Associated Fisheries of Maine, State of Maine, and Northeast Sector Service Network commented that vessels should be provided the flexibility to use multiple meshes on trips targeting redfish with 100-percent observer coverage. They also clarified that vessels should not have mesh of less than 6 inches (15.2 cm) on board if not declared on an exempted redfish trip.

Response: We agree that this option would provide additional flexibility to fishermen. Each trip using the mesh-size exemption to target redfish will have an observer or at-sea monitor onboard the vessel which helps alleviate some concerns raised by opponents of allowing the use of multiple mesh sizes. Because all redfish trips will have an observer or at-sea monitor on board, and the need for additional flexibility, we are allowing vessels to fish multiple mesh sizes on these trips. We also agree that sector vessels cannot have mesh less than the regulated minimum mesh size requirement on board unless fishing under the small-mesh redfish exemption or unless otherwise exempted.

Comment 2: The Council, Associated Fisheries of Maine, State of Maine, and Northeast Sector Service Network suggested that sectors be permitted to allow a subset of their membership to participate in an industry-funded at-sea monitoring program, instead of requiring all members of a sector to participate in that program .

Response: We initially proposed that all sector members would have to participate in an industry-funded at-sea monitoring program submitted by a sector for trips targeting redfish because we felt it would be easier to implement and enforce. However, several comments indicated that not all sector members who wished to target redfish wanted to pay for additional coverage. We understand that the cost of requiring all members of a sector to participate in an industry-funded at-sea monitoring program as proposed for this exemption could prevent a sector

from being able to develop and fund their own at-sea monitoring program. Therefore, this final rule allows a subset of sector members to participate in an industry-funded at-sea monitoring program for trips targeting redfish under this exemption instead of requiring all members of a sector to participate in that program, as explained in the preamble of this rule.

Comment 3: Associated Fisheries of Maine and the Northeast Sector Service Network argued that requiring industry to fund all at-sea monitoring coverage for purposes of utilizing the small mesh redfish exemption is inconsistent with Amendment 16. They cited Amendment 16, which states that “[t]he industry-funded observer or at-sea monitor program will not replace the NMFS Observer Program. In the event a NMFS observer and a third party observer or at-sea monitor is assigned to the same trip, the NMFS observer will take precedence and the third party observer or at-sea monitor will stand down.”

Response: While the comment is unclear on this point, it appears that the commenters believe that vessels participating in an industry-funded at-sea monitoring program should be able to first call into the Pre-Trip Notification System (PTNS) and have the opportunity to receive a federally-funded NEFOP observer or at-sea monitor. Their position, however, is not supported by the quoted language from Amendment 16, which is taken out of context. As described in Amendment 16, NMFS annually establishes a minimum amount of at-sea monitoring coverage that is necessary for monitoring bycatch by all vessels in the groundfish fishery. Amendment 16 also stated that each sector would develop an at-sea monitoring plan to monitor bycatch across the fishery, and industry would pay for all of that at-sea monitoring by fishing year 2012. It was thus in the context of monitoring bycatch across the groundfish fishery that Amendment 16 explained that in the instance where an industry-funded at-sea monitor and Federal observer were assigned to the same trip, the at-sea monitor would “stand down.” The language cited in

the comment above was included in Amendment 16 as a way to acknowledge that some trips would be selected for coverage by the NMFS Observer Program and industry would not be responsible for costs associated with those trips.

Furthermore, prohibiting vessels participating in an industry-funded program from calling into the PTNS system and fishing under the exemption with a federally-funded observer or at-sea monitor is necessary to reduce potential bias in data collected by the NMFS observer program. Sectors originally requested that vessels in an industry-funded at-sea monitoring program have the opportunity to receive a federally-funded at-sea monitor or observer prior to having to contract and pay for their own at-sea monitor coverage in order to take advantage of the small-mesh exemption. We had concerns about this approach because we believed that it could bias the federally-funded coverage. Essentially, any time a vessel interested in taking a trip targeting redfish under this exemption was assigned an at-sea monitor or observer, it would be highly likely that they would take a trip under the redfish exemption, thus biasing the nature of the trips on which observer coverage was provided. In the proposed rule, and as now approved in this final rule, we reduced this bias by prohibiting vessels that participate in a voluntary industry-funded at-sea monitoring program from fishing under this exemption on trips where they are randomly assigned a federally-funded observer or at-sea monitor. It should be noted that we are carefully evaluating this bias for sector exemptions that are being requested for fishing year 2013.

Finally, this comment suggests that vessels participating in an industry-funded at-sea monitoring program as approved in this rule have some type of right to request and potentially receive a NMFS observer. On the contrary, this action approves a voluntary sector exemption for vessels that receive random observer or at-sea monitoring coverage and an additional

voluntary industry-funded at-sea monitoring program. In either circumstance, the exemption requires accepting several accompanying contingencies (e.g., catch thresholds, monitoring requirements, etc.). If a vessel or sector is unwilling to participate in an industry-funded at-sea monitoring program, then a vessel must wait to be selected for random coverage. Or, if a vessel or sector is unwilling to participate in an industry funded at-sea monitoring program and accept the other contingencies, it can choose not to fish for redfish under the exemption.

Comment 4: Associated Fisheries of Maine and the Northeast Sector Service Network expressed concern that if the redfish exemption trips are monitored only by the industry-funded program, they would never be monitored by the more rigorous Northeast Fishery Observer Program (NEFOP) protocol. While the comment is unclear on this point, it appears that the commenters are concerned that the protocols followed by at-sea monitors will not be sufficient to ensure compliance with the small mesh redfish exemption.

Response: NMFS-certified at-sea monitors record all the catch information necessary to adequately monitor the exemption's measures, as approved. While NEFOP Observers gather additional data not collected by at-sea monitors, much of it is data on gear and fishing practices that are not relevant to monitoring the catch thresholds critical to approving this exemption.

Comment 5: A coordinator for the REDNET project commented that the proposed rule incorrectly stated that the "final" report for Component 2 of the REDNET project was available for public review, when in fact it was a "draft" report.

Response: This clarification is correct. The report available for public review was a "draft" report. The "final" REDNET report was submitted to NMFS on January 23, 2013, and is currently under review. However, the catch data (landings and discards) from the REDNET project, which NMFS relied on to approve this exemption, is the same in both the final and draft

report. The draft report was subject to the Council's and public's review. Further, there were no changes to the draft version that substantially affect anything in this rule. The final report added analyses on tow information and length/frequency distributions at particular depths. We continue to believe that the results from Component 2 of the REDNET project support the careful development of a targeted redfish fishery.

Comment 6: The Pew Environment Group expressed serious concerns with the exemption as currently proposed. Pew opposes allowing bottom trawl vessels to target redfish with smaller mesh and suggests that smaller fish will be caught with smaller mesh. Pew cited particular concerns with this exemption due to prior stock depletion as well as the slow growth and long life span of redfish. Pew also noted that additional analyses are necessary before they could support a "directed fishery" for redfish, the results of which may warrant an environmental impact statement (EIS).

Response: While we understand Pew's concerns with the exemption, we do not agree with their comments for several reasons. First, redfish are not overfished or subject to overfishing – the stock is one of the healthiest groundfish stocks. Most of the redfish allocation has recently gone unharvested; in fishing year 2010, only 31 percent of the allocation was harvested, and only 36 percent was harvested in 2011. The Magnuson-Stevens Act encourages fishing at maximum sustainable levels. It should be noted that redfish growth characteristics, such as growth rates and life spans, are considered when annual allocations are established.

Second, the REDNET research shows that smaller mesh can be used to target redfish without resulting in increased catches of juvenile fish. Importantly, because we recognize that these results are just from one study, we are requiring a bycatch threshold to further prevent increased catches of juvenile redfish and other groundfish while fishing with smaller mesh under

this exemption. All trips targeting redfish will be monitored by an observer or at-sea monitor and will provide additional beneficial data to increase our understanding of the fishery and allow us to closely monitor this exemption.

Third, measures in this action have been adequately analyzed in several environmental assessments. The environmental assessment for Framework Adjustment 47 analyzed allocations based on stock assessments that use the best available science, are subject to peer review, and include consideration of the growth rates and lifespan of redfish and other groundfish species. Importantly, this action only allows sector vessels an increased opportunity to harvest more of their allocation, which has previously been underharvested. The environmental impacts of sectors receiving an allocation and fishing under regulatory exemptions for fishing year 2012 are further analyzed in the Environmental Assessment for Fishing Year 2012 Sector Operations Plans and Contracts, which also tiers off the assessment for Framework Adjustment 47.

The environmental impacts specific to this action are analyzed in a Supplemental Environmental Assessment for Fishing Year 2012 Sector Operations Plans and Contracts. This assessment included a review of the REDNET study, which showed no increased catch of juvenile fish when fishing for redfish with 4.5 inch mesh nets. Because the REDNET information shows no increased catch of juvenile fish, and there were no significant impacts found in the EAs and specifications that considered the impacts of fishing for the total allocation, an EIS is unnecessary. Last, this action includes increased monitoring, catch thresholds, and we have stated that we will revoke the exemption if it is determined that fishing for redfish with smaller mesh is negatively impacting redfish or other groundfish stocks.

Changes From the Proposed Rule

We had proposed that all vessels in a sector be required to fund their own at-sea monitoring coverage for trips targeting redfish under this exemption if the sector elected to develop an industry-funded at-sea monitoring plan. The final rule changes this requirement so that a subset of sector members may participate in an industry-funded at-sea monitoring plan that is subject to approval by NMFS.

The November 8, 2012, proposed rule stated that “...to help mitigate catches of sub-legal sized groundfish, total groundfish discards (excluding redfish discards) may not exceed 5 percent of all groundfish caught when directing on redfish with small-mesh nets.” This requirement was incorrectly stated in the proposed rule. Catch from the REDNET research project demonstrated that vessels discarded less than 5 percent of all groundfish caught (including redfish). A clarification was published in the Federal Register on January 10, 2012 (78 FR 2249), with an additional 15-day period to comment on this clarification. No comments on this clarification were received. Redfish discards will be included in the discard threshold as intended and as stated in the EA completed for this action. Not incorporating discards of juvenile redfish could jeopardize the health of the stock.

Classification

The Administrator, Northeast Region, NMFS, has determined that this rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action is exempt from review under Executive Order (E.O.) 12866.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the

Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities.

The factual basis for the certification was published in the proposed rule and is not repeated here.

No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Authority: 16 U.S.C. 1801 et seq.

Dated: February 27, 2013

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

performing the functions and duties of the

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

[FR Doc. 2013-05044 Filed 02/28/2013 at 4:15 pm; Publication Date: 03/05/2013]